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Report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011.

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Summary

The first report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 is submitted pursuant to General Assembly resolution 71/248 and paragraph 50 of the report of the Secretary-General on the implementation of the resolution establishing the Mechanism (A/71/755).

Since its establishment in December 2016 and the commencement of duties by its Head and its Deputy Head in August and December 2017, respectively, the Mechanism, in accordance with its mandate, has focused on developing a methodology and a strategy for best facilitating the accountability process with respect to the Syrian Arab Republic.

The present report sets out the Mechanism's developing vision, the steps taken towards the implementation of its mandate, and the key challenges that it faces. While recognizing the limitations of its mandate, the Mechanism has identified opportunities to forge new approaches to international criminal justice and synergies with fact-finding bodies.

The report outlines the guiding principles and approaches to the work of the Mechanism, such as upholding the independence and impartiality of the Mechanism, keeping the length and the costs of cases manageable, recognizing the important role of civil society, empowering affected communities, addressing sexual and gender-based crimes and crimes against children, and facilitating the attainment of broader transitional justice objectives.

The Mechanism has begun to build a multidisciplinary team and is constructing a comprehensive and secure collection of evidence that can facilitate criminal prosecutions in relevant jurisdictions.

The Mechanism has identified the absence of regular budget funding as a key challenge in the planning and organization of its work. In its collection of evidence, it is also developing strategies for addressing the lack of access to Syrian territory and effectively handling the overwhelming volume of relevant documentation of crimes committed in the Syrian Arab Republic.

Moving forward, the Mechanism seeks the support of the United Nations, Member States and civil society to maximize the positive impact of its work.

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I. Introduction

1. The first report of the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (the Mechanism), on the progress of its work since the Head of the Mechanism took up her duties on 8 August 2017, is hereby submitted to the General Assembly.

2. On 21 December 2016, the General Assembly, by its resolution 71/248, established the Mechanism to assist in the accountability process for serious international crimes committed in the Syrian Arab Republic since March 2011. On 19 January 2017, pursuant to a request by the Assembly, the Secretary-General submitted the terms of reference of the Mechanism (A/71/755, annex). Between the Mechanism's creation and the commencement of duties by the Head in August 2017, the United Nations High Commissioner for Human Rights oversaw the appointment of a start-up team, which worked on structures and procedures for the establishment of the Mechanism. The Mechanism is grateful for the hard work and achievements of the start-up team, which have greatly facilitated the commencement of the Mechanism's substantive work.

3. With the commencement of that work, the Mechanism, in accordance with its mandate, has focused intently on developing a viable vision for facilitating the accountability process with respect to the Syrian Arab Republic. As described throughout the present report, that vision is being tested and refined through robust engagement with key stakeholders and steps are well underway to lay the foundation for its implementation.

4. As the Mechanism embarks upon this assignment, it is mindful of the imperative of accountability for the crimes committed in the Syrian Arab Republic since March 2011. In creating the Mechanism, the General Assembly emphasized the importance of ensuring credible and comprehensive accountability for serious international crimes as part of any political process to end the crisis in the Syrian Arab Republic.[1] The Mechanism is equally mindful of the inevitable disillusionment of those people most affected by the crimes, who currently do not have comprehensive, immediate prospects of justice. While the Mechanism's creation did not add a new jurisdiction in which to directly prosecute cases, the Mechanism can and will carry out work that will advance accountability processes elsewhere, now and in the future. In performing the crucial preparatory work at the core of its mandate, the Mechanism is guided by a victim-centred approach aimed at strengthening the confidence of the affected Syrian communities in the prospect of justice promoting the dignity of the victims. The Mechanism is also conscious that criminal accountability processes are part of broader transitional justice objectives that will ultimately be needed for the Syrian Arab Republic.

5. Although the Mechanism was borne out of the absence of a comprehensive jurisdictional path forward, its uniquely crafted status as a quasi-prosecutorial office (see para. 10 below) affords many opportunities to re-examine and reconfigure approaches to international justice. By coordinating effectively with national jurisdictions, civil society and other international actors, the Mechanism can play a role in promoting a more comprehensive and integrated accountability strategy for the Syrian Arab Republic. That strategy recognizes the combined role of multiple jurisdictions in ensuring an appropriate measure of justice for the widespread crimes

[1] See resolution 71/248, para. 2.

at issue, as well as the efficiencies that flow from coordination among actors across those jurisdictions from an early stage.

6. The present report, while appropriately safeguarding the confidentiality of the Mechanism's work as required in its terms of reference, sets out the Mechanism's developing vision of the implementation of its mandate, the specific steps taken towards the achievement of its goals and the key challenges informing the development of its strategies.

II. Key aspects of the Mechanism's mandate

A. Limitations and opportunities

7. It is important that the communities affected by the crimes committed in the Syrian Arab Republic, as well as the international community more generally, have a clear understanding of the nature and the scope of the Mechanism's mandate. In creating the Mechanism, the General Assembly has not established a new criminal jurisdiction that can issue indictments, prosecute cases or render judgments. Rather, it has created an office that will carry out essential preparatory work, grounded in criminal law methodologies, to advance the criminal justice process in available jurisdictions. Currently, this includes national courts that can exercise jurisdiction, such as forms of universal jurisdiction, over certain crimes committed in the Syrian Arab Republic. However, in the future this could mean an existing body that acquires jurisdiction over international crimes committed in the Syrian Arab Republic or a new jurisdiction specifically created to deal with such crimes.

8. The legal work at the core of the Mechanism's mandate has twin aspects. First, the Mechanism has been mandated to collect, consolidate, preserve and analyse evidence of violations.[2] Second, it has been mandated to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law.[3] There is significant emphasis on the Mechanism's collecting the voluminous information and evidence of violations in the Syrian Arab Republic already collected by a multitude of other actors, and focusing its own investigative work on any gaps identified. There is also a significant emphasis on adding to the existing work a deep analytical layer grounded in criminal law methodologies, and then constructing criminal case files to be used by jurisdictions as a basis for the prosecution of alleged perpetrators of serious international crimes in the Syrian Arab Republic.

9. The Mechanism's mandate is different from those of other United Nations bodies that have been documenting violations committed in the Syrian Arab Republic. In particular, the Mechanism's work moves out of the traditional human rights fact-finding realm and falls squarely within a criminal accountability framework. In addition to applying rigorous evidentiary frameworks for establishing the occurrence of crimes (referred to in the international criminal law context as "crime-based" evidence), the Mechanism's work will focus on identifying evidence that links these crimes to specific individuals. These individuals include those alleged to have physically perpetrated the crimes as well as those allegedly responsible for the crimes under other recognized legal frameworks, including by directing, allowing or tolerating the crimes, or by cooperating or assisting in their commission.

[2] See resolution 71/248, para. 4.
[3] Ibid.

10. The Mechanism's mandate is also different from other models of international criminal justice that have gone before. Created by the General Assembly, the Mechanism is not a court or tribunal with a jurisdiction attached. Given that limitation, it has been described as having a "quasi-prosecutorial function",[4] reflecting the fact that it will support criminal prosecutions and apply criminal justice methodologies in its work, even if it cannot ultimately issue indictments or prosecute cases.

11. Experience gained in core international crimes accountability processes to date has revealed the extensive amount of time-consuming analytical work required to develop a comprehensive understanding of crime patterns and potential perpetrators in a protracted and structurally complex situation such as that in the Syrian Arab Republic. The Mechanism's mandate appropriately recognizes that, even if there are limited immediate prospects for justice, that preparatory work must commence. By front-loading work to collate the evidence, build a sophisticated understanding of the situation in the Syrian Arab Republic and the relevant actors, map the crime patterns, identify those most responsible, craft appropriate legal frameworks and develop case files, criminal proceedings can be expedited once additional jurisdictional paths forward have appeared.

12. The limitations of the Mechanism's mandate are, at the same time, sources of opportunity to forge new approaches to international criminal justice. Over the past two and a half decades, it has become increasingly apparent that accountability for core international crimes usually depends on complementary approaches across and between national, regional and international jurisdictions. A key lesson learned from the ad hoc United Nations tribunals has been the great potential for international mechanisms to function as a springboard for facilitating accountability processes at the national level. The Mechanism's mandate brings these developing strands together in a model that, from the outset, sees accountability as a responsibility extending across multiple jurisdictions and involving coordination between national and international actors. Importantly, it is also a model that recognizes synergies between international human rights fact-finding and criminal justice processes. In particular, the extensive work done by the Independent International Commission of Inquiry on the Syrian Arab Republic provides an important source of information for the Mechanism to consider in identifying patterns of violations and other evidentiary leads.[5] There are also significant synergies between the work of the Mechanism and that of other bodies, such as the Organisation for the Prohibition of Chemical Weapons (OPCW)-United Nations Joint Investigative Mechanism [6] and non-governmental organizations whose work has begun the process of linking crimes to those potentially responsible.

[4] See A/71/755, para. 32.

[5] The Commission was established on 23 August 2011 by the Human Rights Council to investigate alleged violations of international human rights law since March 2011. The Commission focuses on directly collecting information, publicly reporting broad patterns of violations, abuses and emblematic incidents and making recommendations, in particular to Member States.

[6] The Joint Investigative Mechanism was established by the Security Council in its resolution 2235 (2015). Its mandate was not renewed beyond 16 November 2017. The mandate of the Joint Investigative Mechanism was to identify, to the greatest extent feasible, those involved in the use of chemicals as weapons in the Syrian Arab Republic and to report its findings to the Security Council. As a basis for the investigations carried out by the Mechanism, it required a determination by the OPCW fact-finding mission in the Syrian Arab Republic that, from 2014 onwards, a specific incident in the Syrian Arab Republic involved, or likely involved, the use of chemical weapons.

B. Guiding principles and approaches

1. Independence and impartiality

13. Independence and impartiality are at the heart of the Mechanism's mandate. Consequently, from the outset, the Mechanism has been developing a clear theoretical framework, as well as practical guidelines, for the embedding of these core characteristics.

14. In terms of independence, the Mechanism will not act on instructions from any other source in performing its work. Nor will it be influenced by the known or presumed wishes or agendas of external actors. In the specific context of the Mechanism's work, which relies heavily on the receipt of information and evidence from other bodies, independence also means not importing the conclusions drawn by those other bodies about the material provided. Rather, in all instances, the Mechanism will make its own objective assessment of material received and draw its own inferences, applying a criminal law standard. While the Mechanism will seek the broadest possible engagement with a range of entities, there are limits to that engagement in order to preserve the Mechanism's independence. In particular, the Mechanism cannot take direction from any external actor regarding its strategy, selection of cases, preparation of files or any other aspect of its substantive work. The Mechanism's work on accountability will also proceed independently of developments in the Syrian peace process and will be based on the principle that no amnesty can be granted for core international crimes.

15. In terms of impartiality, the Mechanism will apply consistent methods and criteria in its work that are not biased against, or in favour of, any particular State, group or individual. It will take proactive steps to address crimes committed regardless of any affiliation of the alleged perpetrators, and it will engage with potential providers of information and evidence relevant to crimes against victims on all sides. To that end, the Mechanism is seeking to establish channels of communication with all relevant information holders, including authorities from the Syrian Arab Republic. If relevant information holders choose not to cooperate with the Mechanism, that might affect its ability to collect evidence and develop case files about associated crimes. While the Mechanism is committed to an even-handed approach to seeking evidence, both incriminating and exculpatory, its substantive work will necessarily be driven by the evidence to which it has access.

2. Strategies for strengthening approaches to addressing international crimes

16. As the Mechanism embarks on its criminal-justice-focused mandate, it has an outstanding opportunity to draw on the rich lessons learned from the practice of a multitude of other bodies over the past 25 years in prosecuting international crimes. The Mechanism is beginning its work with the accumulated guidance of those lessons learned, while also modifying and developing practices to fit its unique mandate and the circumstances of the Syrian situation. It is also drawing relevant insights from related fields of practice, including human rights fact-finding, where relevant. Some of those key insights are addressed below.

3. Keeping the length and the cost of cases manageable

17. In developing its case-building policy (see para. 49 below) and, ultimately, constructing its case files, the Mechanism will seek to ensure that the scope of the associated cases will be manageable, in terms of both cost and time. Past experience has shown that building cases that cover too many allegations, or that focus on unnecessarily evidence-heavy categories of crime or modes of liability, does not serve the interests of justice if they take too long or consume too many resources. Finding

the right balance between cases that appropriately reflect the criminality at issue and cases that are not unduly lengthy or costly will be a key objective for the Mechanism.

18. Past practice has also revealed creative methods for doing more with less when it comes to international justice, and the Mechanism will work to integrate such methods wherever possible. This will include strategies for reducing the required amount of evidence, and appropriate resource-sharing arrangements with other relevant actors. The Mechanism is also actively focusing on the identification of other efficiency measures that arise from its specific framework.

4. Recognizing the important role of civil society in accountability processes for international crimes

19. A distinctive aspect of the international justice process, compared with criminal justice processes with respect to other categories of crime, is the important role of civil society in documenting violations. As a result, a large number of organizations with disparate mandates may seek to access the same or similar sources of evidence.

20. The Mechanism recognizes both the benefits and the challenges arising from this reality. In the Syrian context, civil society actors, particularly Syrians, have played a crucial role in documenting violations, often at great risk to the individuals carrying out that difficult work. In parallel, evidentiary challenges can arise from duplication as well as from collection techniques inconsistent with criminal law standards.

21. Drawing on past experience, and in accordance with its mandate, the Mechanism sees the importance of fully recognizing the essential role that civil society plays in documenting violations relevant to the Mechanism's mandate. It also sees obvious scope, when possible and subject to operational constraints, for providing some feedback to civil society actors about the utility of information that they have given the Mechanism, as well as for making constructive suggestions about increasing the utility of information collected in the future. In addition, the Mechanism is working on strategies aimed at promoting greater coordination with civil society actors to enhance the overall effectiveness of the collective work being done.

5. Empowering the affected communities through the Mechanism's work

22. The Mechanism will seek to empower the affected Syrian communities through its work. Past experience has underscored the importance of the proactive policies of international justice bodies to ensure, from the outset, appropriate outreach to the affected communities regarding their work. This includes promoting effective exchanges so that the views and interests of the affected communities are canvassed and considered on an ongoing basis. To that end, the Mechanism will prioritize engagement with victims, particularly through representative associations where possible, and will be guided by a victim-centred approach throughout its work.

6. Developing effective approaches with regard to sexual and gender-based crimes and crimes against children

23. The Mechanism's mandate expressly lays down the expectation that sexual and gender-based crimes, as well as crimes against children, will receive specialized attention in its work.[7] The Mechanism is committed to following through on such undertakings, fully equipped with the benefit of past experience. Crucial lessons have been learned about effectively addressing conflict-related sexual and gender-based

[7] See A/71/755, annex, para. 32.

crimes and crimes against children, and the Mechanism will draw on those valuable insights in its work.

24. Some of the strategies for ensuring effective approaches to these categories of crimes are obvious, but have not always been diligently pursued by international justice bodies in the past. These include recruiting staff members with relevant expertise, developing policies and operational guidelines on addressing these categories of crimes and ensuring their ongoing implementation and revision, as well as training for all staff members, on a regular basis.

25. Training programmes with respect to crimes of sexual and gender-based violence must be designed to address the intangible barriers to effective approaches. These include ongoing misconceptions about the nature and the seriousness of sexual violence that have thwarted or weakened accountability efforts in the past. The Mechanism will also ensure that its work on gender issues is not limited to sexual violence, but addresses the full range of gender-based crimes arising in the Syrian context, as well as other gender issues, such as ensuring that the voices of women are properly heard in the accountability process.

7. Supporting Mechanism staff in effectively managing the risk of "secondary trauma"

26. The work done by international criminal justice actors inevitably has an associated emotional impact, given the constant exposure to accounts and images of traumatic events that have affected the lives of others. Past experience has revealed the need for better support measures to assist practitioners in managing this aspect of the work, particularly the accumulated emotional impact of traumatic work done over many years. For example, important lessons have been learned about the imperative of providing information to staff members about the nature of "secondary trauma" that can arise from the work and strategies for managing it. Developed expertise on this issue also underscores the significant benefits for well-being that accrue to an office when the leadership promotes open discussion of "secondary trauma" and related issues. From the outset of its work, the Mechanism has been committed to providing effective support to staff members on this issue, which in the longer term will also enhance its efficiency. This is an issue on which the Mechanism sees significant potential for collaboration with a broad range of other organizations engaged in trauma-related work, to exchange experiences and approaches that will collectively advance practices by all relevant actors.

8. Facilitating broader transitional justice objectives

27. While the Mechanism's mandate is firmly focused on preparatory work to facilitate criminal prosecutions, it nevertheless recognizes that criminal accountability is an element of a broad transitional justice approach for the Syrian Arab Republic that includes truth-seeking processes, reparations and reforms of institutions and laws.[8] Certainly, past experience has shown that work done by criminal justice bodies, particularly the development of a comprehensive and well-structured collection of evidence, can significantly facilitate other transitional justice objectives. These include the search for missing persons as well as vetting and reparations processes. The Mechanism has those objectives in mind as it commences its work and, in particular, is seeking to integrate approaches to the construction of its evidence collection that will maximize its utility for such broader processes, without requiring significant additional resources. The Mechanism will ensure that

[8] Ibid., para. 8.

any confidentiality guarantees or other restrictions that apply to the material it has received are strictly observed.

III. Key activities in the first phase of the Mechanism's substantive work

A. Establishing a functioning office

1. Leadership

28. The Secretary-General appointed Catherine Marchi-Uhel of France as Head of the Mechanism on 4 July 2017, and she took up her duties on 8 August 2017. The Secretary-General subsequently appointed Michelle Jarvis of Australia as Deputy Head of the Mechanism at the end of October 2017, and she took up her duties on 1 December 2017. Both have extensive experience in working in the international criminal justice field and performing senior management functions within large United Nations legal offices.

2. Premises

29. The Mechanism is located on premises secured by the start-up team within the Palais des Nations in Geneva. As envisaged by the General Assembly, locating the Mechanism in Geneva is facilitating close consultation and coordination with the Independent International Commission of Inquiry on the Syrian Arab Republic, as well as with a range of other key actors.

30. Since the Mechanism began its activities in August 2017, priority has been placed on establishing the security systems for the Mechanism's premises that are a precondition for proceeding with its substantive work in the immediate term, particularly the construction of its evidence collection. The Mechanism is working together with the United Nations Office at Geneva and the host State to determine the most suitable premises for the Mechanism in the longer term and as a deeper understanding of its specific operational requirements develops.

3. Building a team

31. The Mechanism has begun to build the multidisciplinary team required to perform its work. The team will include investigators and analysts in various areas, including criminal, military, political and security apparatus analysts. In addition, criminal lawyers with national and international experience and diverse perspectives, including in terms of prosecution, defence and adjudication, are being recruited. The team will also include: experts in electronic discovery, or "e-discovery",[9] cybersecurity and information technology (IT); specialists in the areas of sexual and gender-based crimes and crimes against children; language staff; witness support and protection experts; and administration support. By March 2018, the team is expected to comprise approximately 20 staff members, building to full capacity of some 60 staff members over the coming year.

32. In view of its broad mandate and its relatively limited staffing, the Mechanism is prioritizing the recruitment of applicants who can bring to the office combined skill sets. In addition to the expertise that they bring in their professional categories, the

[9] An electronic evidence management methodology that applies information governance and digital forensic best practices to the identification, collection, preservation, storage, processing, review, analysis, sharing, disclosure and eventual presentation of electronic evidence in a litigation or investigation process.

Mechanism will seek to recruit applicants with, for example, Arabic-language skills, knowledge of the Syrian Arab Republic or the region more broadly, IT skills, familiarity with the national jurisdictions with which the Mechanism will work closely, and expertise on gender issues and on crimes against children.

B. Contributing to the accountability process

1. Building a secure evidence collection that can facilitate prosecutions across diverse jurisdictions, now and in the future

33. The Mechanism has begun the process of building a comprehensive and secure evidence collection that can facilitate criminal law prosecutions in appropriate jurisdictions, now and in the future. In addition to collecting and collating electronic evidence, the Mechanism is creating the capacity to collect physical evidence and to ensure its appropriate storage and preservation in the longer term.

34. The Mechanism is taking a broad approach to the construction of its evidence collection, while recognizing that only a portion of this material will likely find its way into the case files that it develops. A broad approach to collection is important for several reasons. First, it will ensure that the Mechanism has all the necessary information to thoroughly understand the context of the crimes, which will inform, but not necessarily form part of, its case files. Second, the Mechanism's broad evidence collection will maximize the prospect of assisting on a wide range of evidentiary issues that may become relevant in criminal proceedings in diverse jurisdictions. Third, a comprehensive evidence collection can facilitate broader transitional justice objectives in the future.

35. An important challenge for the Mechanism is turning the voluminous amount of existing and future documentation and other material into an evidentiary resource on which to base criminal cases. As mandated in its terms of reference, the Mechanism is setting up a state-of-the-art IT system to house the evidence collection. This system is required to accommodate unprecedented volumes of information and evidence, including large amounts of images and video material. It must provide a framework for meticulously organizing the material, ensuring that it is easily searchable and that appropriate metadata are established, integrated and maintained to facilitate analysis. Methods for tracking duplicate material, linking translations and rigorously enforcing confidentiality restrictions are also being integrated.

36. While it is clear that a core aspect of the Mechanism's mandate is data-driven, at this stage the types and the quantities of the data that will dominate investigation and analytical activities are not fully known. For example, the Mechanism could be part of one of the largest ever collaborative open-source video analysis projects, requiring cutting-edge technology and engaged partners. The nature and the quantity of the data will in turn define the required strategy for procuring software, hardware and relevant skills to support stakeholders. The Mechanism is working to clarify the requirements so that it can execute a thorough procurement strategy as expeditiously as possible, while prioritizing cost-effective information security.

37. The Mechanism has defined an innovative strategy that includes collecting information from States, civil society, the private sector and the United Nations and that places security, flexibility and integration at the forefront of evidence-handling requirements. In parallel, a contributor survey has been initiated with upstream collectors that will be used to define custom analytical tools and the overall storage capacity required by the Mechanism. The contributor survey will inform the collection strategy and target the types of data that are of high value to Mechanism stakeholders.

38. To meet an urgent operationalization deadline, the Mechanism is exploring the possibility of value-in-kind IT systems contributions and is generating a list of needs for direct donation. In-kind contributions will allow the Mechanism to use systems immediately in 2018, while creating time in which to execute formal budgeted procurement processes for long-term solutions for 2019 and beyond. As the Mechanism matures, data storage costs related to the mandate to preserve evidence will be considerable and likely require funding structures beyond voluntary contribution.

39. Data protection and information security are key priorities for the Mechanism. Accordingly, the Mechanism has prioritized the recruitment of information security and information management personnel, who are building an information governance strategy for end-to-end compliance and protocols for internal operations and data transfers. Data protection by design will inform the evaluation and procurement process, establishing standards and a workflow that will maintain the confidentiality and integrity of information and evidence.

2. Developing effective systems for sharing material and expertise with national jurisdictions

(a) General considerations

40. As is well known, a number of national jurisdictions, particularly in Europe, are engaged in work to address crimes committed in the Syrian Arab Republic. Those jurisdictions are carrying out important work, often with limited resources and despite significant obstacles. The Mechanism sees significant potential for facilitating the work of prosecutors in the jurisdictions by providing information and evidence, as well as other material and expertise that it has developed. One of the Mechanism's current priorities is to identify, in consultation with the relevant jurisdictions, the areas where it can add most value to existing work while avoiding duplication. The Mechanism is also developing guidelines for responding to any requests for information or evidence made by other parties in national criminal justice processes.

41. In accordance with its mandate, the Mechanism can share evidence and other material only with those jurisdictions that respect international human rights law and standards, including the right to a fair trial, and where the application of the death penalty would not apply.[10] Understandably, questions have been raised about how the Mechanism will make this assessment. It is an important and complex issue that requires the application of a well-thought-out and consistent methodology. The Mechanism is currently developing relevant guidance on this issue.

42. Sharing material from the Mechanism's evidence collection will be done in a manner that respects any applicable confidentiality requirements. More specifically, the Mechanism shall not share confidential material if the provider has stated that the material should not be shared. The Mechanism will further assess and address any security issues that might arise from the sharing of material from its evidence collection.

43. Some national jurisdictions will need legislative reform in order to share material and engage more generally with the Mechanism. The Mechanism's leadership is consulting with relevant ministries on these issues as they arise. The commitment so far expressed to addressing these issues has been encouraging, giving cause for optimism that they can be resolved swiftly and effectively.

[10] Ibid., annex, para. 14.

(b) Sharing evidence

44. As the Mechanism is building its evidence collection, it is taking steps to maximize the utility of that collection for the ongoing or future investigation and prosecution by national jurisdictions of crimes committed in the Syrian Arab Republic. Consultations are under way with a number of national law enforcement authorities to determine the evidentiary angles likely to be of most significance for their work as well as the most effective frameworks for the sharing of relevant evidence.

45. The Mechanism will assess the probative value of the accounts of violations documented by other entities. In the event that the witnesses to or victims of crimes are willing and able to testify in national proceedings, the Mechanism will facilitate the process whereby their evidence could be adduced as testimony. In reaching out to witnesses, the Mechanism will assess whether appropriate witness protection options are available so that the individuals concerned can exercise a genuine choice as to whether they are willing to appear as witnesses in national courts.

46. The Mechanism is putting in place guidelines to address chain-of-custody considerations regarding existing and future evidence collected, since these will be core considerations in any criminal law jurisdiction in which such evidence may be tendered in the future.

(c) Sharing analytical and other tools

47. The Mechanism's mandate refers in broad terms to the sharing of information with other jurisdictions to facilitate criminal proceedings. The Mechanism has identified significant potential for the sharing of analytical work product and other tools with prosecutors in other jurisdictions. As noted above, a distinctive feature of international criminal justice is the extensive amount of analytical background work required to: fully map the situation; establish the existence of one or more conflicts; identify relevant crimes and actors; develop analytical resources, such as chronologies, maps and organizational charts; and develop historical, cultural, political and military knowledge as well as expert overviews of relevant events. The Mechanism, with its broad mandate covering all serious international crimes committed in the Syrian Arab Republic since March 2011 and its potential access to a wide range of material collected by others, is uniquely positioned to develop such resources and expertise. These can be shared with actors at the national level, who may be focusing on more discrete aspects of the situation in the Syrian Arab Republic and have less capacity to develop broader understandings of the context. Such resources may also be of interest to countries engaged in "structural" investigations into crimes committed in the Syrian Arab Republic, to supplement their own resources. The Mechanism sees considerable scope, for example, to develop: evidentiary packages to facilitate proof of contextual elements of international crimes that could be flexibly adapted to various national jurisdictions; possible sources of expert evidence on a wide range of relevant issues (military, historical, cultural, gender, etc.); and assistance with identifying other resources that are often difficult to locate, such as high-quality translators/interpreters for criminal proceedings.

3. Preparing case files for other jurisdictions, now and in the future

48. While the Mechanism has been mandated to prepare criminal files concerning serious international crimes committed in the Syrian Arab Republic, it will have to exercise significant discretion in its selection of cases. As with most accountability processes relating to core international crimes, it is not possible to prosecute all of the crimes committed, given their vast number.

49. The Mechanism is developing a case-building policy, which will guide the exercise of such discretion. While the gravity of the crimes must be a dominant case selection factor, there are also other guiding principles that should be considered in the specific context of the Mechanism's work. These include, for example, the need to ensure fair representation of crimes committed on all sides as well as against males and females, adults and children. They also include due priority with respect to crimes that play an integral role in sustaining the conflicts or impeding humanitarian assistance to the victims. Objectives such as deterrence and the setting of important legal precedents that might facilitate future accountability pathways will also be factored into the policy. In addition, given the multi-jurisdictional framework for accountability in which it is situated, the Mechanism will consider the nature and the extent of case files being developed by other relevant criminal justice actors.

50. The case files developed by the Mechanism will include both inculpatory and exculpatory evidence. An analytical framework linking evidence with material elements of identified crimes and modes of criminal responsibility will also be included. Furthermore, the Mechanism envisages offering peer-to-peer engagement between its practitioners and those working in the receiving entity following the sharing of case files, should that be of assistance.

C. Engaging with stakeholders and other interlocutors

51. Since it began its work, the Mechanism has been engaging with various stakeholders, including civil society, United Nations entities and States, to build relationships of trust and to explore possibilities for collecting information and evidence of crimes committed in the Syrian Arab Republic. Building trust with potential providers of information is particularly important given the Mechanism's role as a repository of information and evidence collected by others.

1. Victim communities and civil society

52. The Mechanism considers that engagement with victim communities is a crucial part of its work. As its team grows, such engagement will be an increasing focus, to ensure that the voices of victims are heard and appropriately factored into the Mechanism's work and that there is two-way communication about that work with those most directly affected. Understanding and managing the widely varying expectations about what the Mechanism can contribute to the accountability process — and explaining how the principles of independence and impartiality will guide its work — is a crucial aspect of this.

53. The Mechanism also recognizes the important role that civil society plays in the accountability process. With that in mind, the Mechanism has prioritized engagement with Syrian and international non-governmental organizations working on issues relevant to its mandate. In liaising with non-governmental organizations, the Mechanism has sought to enhance their understanding of its mandate, while discussing modalities for cooperation and securing commitments to providing relevant information and documentation.

54. The Mechanism is particularly committed to further strengthening its relationship with Syrian civil society and to maintaining an ongoing dialogue with Syrian non-governmental organizations. In addition to providing information and documentation on crimes committed in the Syrian Arab Republic, civil society has an important role in facilitating contacts with victims and witnesses and providing background and contextual information. Syrian civil society is also key to spreading awareness of the Mechanism's work among communities affected by the crimes, including in those areas where the Mechanism does not have access. Following two meetings with Syrian non-governmental organizations, held in Lausanne,

Switzerland, in May and October 2017, a platform was established for twice-yearly meetings between the Mechanism and those bodies. The Mechanism and Syrian non-governmental organizations also agreed to conclude a protocol, which sets the general framework for cooperation. The protocol is currently being finalized and will be published on the Mechanism's website (https://iiim.un.org/) after it has been signed by the parties.

55. In terms of international non-governmental organizations, the Mechanism has also opened channels of communication and concluded cooperation agreements, particularly with those that are focusing on collecting and preserving evidence of crimes in the Syrian Arab Republic for the purposes of criminal proceedings.

2. Independent International Commission of Inquiry on the Syrian Arab Republic

56. Access to the extensive documentary holdings of the Independent International Commission of Inquiry on the Syrian Arab Republic is a central requirement in the Mechanism's mandate. It is also imperative in the light of the expectations expressed by some victims and representatives of civil society, during consultations with the Mechanism, that information they have given to the Commission will now be made available to the Mechanism to advance the accountability process. However, issues of confidentiality and consent from information providers for sharing material between different entities must be handled carefully.

57. Consultations between the Mechanism and the Commission have been ongoing since September 2017 to reach an agreement on modalities of cooperation. This includes the conditions governing access by the Mechanism to material held by the Commission and for the use of such material in support of ongoing or future criminal prosecutions. The Mechanism is optimistic that an agreement will be concluded imminently, paving the way for expeditious access to a large amount of relevant material. This will inform the Mechanism's strategic planning in this first phase of its work and will play an important part in the building of its evidence collection.

3. Organisation for the Prohibition of Chemical Weapons-United Nations Joint Investigative Mechanism

58. Since it became operational, the Mechanism has been in contact with representatives of the OPCW-United Nations Joint Investigative Mechanism, seeking to obtain material concerning the use of chemical weapons in the Syrian Arab Republic. Following the non-renewal of the mandate of the Joint Investigative Mechanism in November 2017,[11] the Mechanism is liaising with the United Nations Secretariat to explore available means for accessing such material. The Mechanism is also exploring the possibility of obtaining the same or similar material directly from the information providers.

4. Other United Nations bodies

59. In addition to the Independent International Commission of Inquiry on the Syrian Arab Republic and the Joint Investigative Mechanism, a number of United Nations bodies have mandates that intersect with the Mechanism's work. These include bodies that can potentially assist the Mechanism with, for example: locating relevant witnesses; developing effective humanitarian services referral pathways to assist victims with whom the Mechanism interacts; and expertise on gender issues and issues concerning children. The Mechanism has begun to actively reach out to a

[11] At its 8073rd meeting, on 24 October 2017, the Security Council determined not to renew the mandate of the Joint Investigative Mechanism.

broad range of such bodies to start a dialogue and to identify concrete opportunities for coordination and cooperation.

5. States and national war crimes units

60. The Mechanism has been engaging with States, many of which have expressed their willingness to provide relevant information and evidence in their possession. As noted above, initial consultations on the revision of national laws and procedures to allow full engagement with the Mechanism have been positive.

61. The Mechanism has also engaged constructively with the war crimes units of various States. Those dialogues have highlighted ways for the Mechanism to assist domestic jurisdictions in prosecuting international crimes committed in the Syrian Arab Republic. The Mechanism is developing a strategic overview of relevant national legislation and policies, mindful of its commitment to the highest standards for evidence management, to support the efforts of national war crimes units. The Mechanism has also begun to plan an integrated approach to witness protection and support, which envisages the involvement of witness security programmes within domestic systems.

62. The Mechanism has identified the European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes, hosted by Eurojust in The Hague, as an important partner and has prioritized active engagement with that forum. The Head of the Mechanism briefed the network in October 2017. This was an important opportunity to gain a deep understanding of national investigative and prosecutorial experiences concerning the Syrian situation as well as to explore avenues for collaboration. The Mechanism has also sought to familiarize itself with information-sharing frameworks utilized by the network, such as the European Police Office, with its high-technology capabilities and global partnerships.

6. Other relevant interlocutors

63. The Mechanism has been engaging with a number of other interlocutors, including intergovernmental organizations, the private sector and academia, to explore areas of potential assistance and collaboration, including the collection of relevant information about crimes committed in the Syrian Arab Republic, IT expertise and legal research.

7. Facilitating cooperation and coordination among relevant criminal justice actors in diverse jurisdictions

64. Since the Mechanism is engaging with many different criminal justice actors across diverse jurisdictions working on crimes committed in the Syrian Arab Republic, it anticipates scope for facilitating cooperation and coordination among them, aimed at enhancing the collective results achieved.

D. Establishing outreach capabilities

65. The Mechanism's website was launched in December 2017 as an important initial step towards the building of its outreach capabilities. The website is a central medium for informing the public, civil society and the international community about the Mechanism's work. Job vacancies will also be posted on the website.

IV. Key challenges in the first phase of the Mechanism's work

A. Funding and resources

66. For the time being, the Mechanism must rely on voluntary contributions to fund its work. While initial pledges have been encouraging — confirming the importance of the Mechanism's mandate and the imperative of accountability for the crimes committed in the Syrian Arab Republic — the absence of regular budget funding creates a number of challenges. Specifically, it makes it more difficult for the Mechanism to plan and organize its work to maximize long-term efficiency. It also means that already limited resources will be diverted from substantive work into fundraising activities. Past experience has convincingly demonstrated that running an international justice mechanism within the framework of voluntary funding is fraught with challenges. As noted in the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities,[12] voluntary funding is not appropriate for international justice mechanisms.

67. The Mechanism's estimated budget for 2018 is approximately $14 million. As at 31 January 2018, the funds pledged for 2018 totalled approximately $10 million, of which $7.6 million had already been received. The Mechanism expresses its appreciation to those States that have so far pledged and provided funds for its work, as well as those States that have supported its fundraising efforts more generally.

68. The General Assembly undertook to revisit the question of regular budget funding for the Mechanism at the earliest opportunity.[13] In December 2017, the Assembly called upon the Secretary-General to include the necessary funding for the Mechanism in his next budget proposal.[14] Securing regular budget funding for the Mechanism would be a significant step forward and demonstrate the international community's genuine commitment to justice for the victims of crimes committed in the Syrian Arab Republic.

69. When it comes to resources more generally, the Mechanism has a lean structure given the breadth of its mandate and the complexity of its work. The Mechanism is committed to integrating the most efficient working methods possible to maximize the international community's return on its accountability investment. Unquestionably, the Mechanism has an important opportunity to contribute to the forging of new and more efficient approaches to accountability for international crimes.

B. Access to Syrian territory

70. The Mechanism cannot presently access Syrian territory. The Mechanism is mitigating the associated impact of this by developing strategies to access a wide range of relevant material, facilitated by technological developments. Nevertheless, the Mechanism will continue to seek access to Syrian territory and to evidence located there.

[12] See A/72/268, para. 58.

[13] See resolution 71/248, para. 8, and A/71/755, annex, para. 36. In a note verbale dated 6 March 2017, the Secretary-General invited all Member States to contribute to the Mechanism's funding, noting that sustained funding was essential for the Mechanism. This was reiterated and stated as a recommendation in his second report on the implementation of the resolution establishing the Mechanism (see A/71/755/Add.1, paras. 24–27 and 34 (a)).

[14] See resolution 72/191, para. 35.

71. The Mechanism has reached out to the Syrian authorities to discuss these questions. To date, they have not responded.

C. Handling the overwhelming volume of documentation

72. The challenge for the Mechanism will not be a paucity of available material, but rather effectively handling the overwhelming volume of material produced on the Syrian situation. In particular, the volume of videos and other images — as well as the role played by social media — is unprecedented in any other accountability process with respect to international crimes to date. The standard tasks of classifying relevant material, demonstrating authenticity, presenting the complexity of collected material in innovative visual ways and managing the association of evidence with other corroborating material become amplified by volume and by the diversity of the collection methods and organizations involved. This means that the Mechanism must devise creative new strategies for handling that reality, which makes its IT systems and expertise crucial, as reflected by the heavy early focus on this aspect of its operations. It also means that finding effective methods to promote coordination and improved practices among information collectors must be a priority.

V. Supporting the Mechanism's work

73. Moving forward, the Mechanism seeks the following support to maximize the positive impact of its work:

(a) Assistance from the United Nations system:

- To fully cooperate with the Mechanism and to promptly respond to any request, including access to all information and documentation;

(b) Assistance from the General Assembly:

- To approve regular budget funding for the Mechanism for the 2020/21 budget cycle onwards;

(c) Assistance from States:

- Until the Mechanism receives regular budget funding, to commit funding, preferably on a multi-year basis, to ensure that the Mechanism can operate at its budgeted level;
- To consider value-in-kind contributions, particularly to assist the Mechanism in expeditiously putting in place its IT systems;
- To ensure that any changes to national legislative frameworks required to facilitate cooperation or other engagement between States and the Mechanism are made swiftly;
- To share relevant evidentiary and other material about international crimes committed in the Syrian Arab Republic, including material previously provided to the Joint Investigative Mechanism;
- To consider entering into cooperative agreements with the Mechanism to provide witness protection and support services in connection with the Mechanism's work;

(d) Assistance from civil society:

- To continue its constructive engagement with the Mechanism to ensure that the Mechanism has access to all relevant material to facilitate the accountability process;
- To engage with the Mechanism regarding coordination strategies.

VI. Conclusion

74. The Mechanism has an important opportunity to strengthen the justice process with respect to crimes committed in the Syrian Arab Republic and to promote a more integrated accountability strategy that reflects and reinforces the role of many different actors at both the national and international levels. In the coming months, the Mechanism will continue to actively engage with key interlocutors to further inform its strategic planning, with a view to maximizing the positive impact of its work.

75. With a functioning office now established, a growing team of multidisciplinary and highly skilled staff members on board and significant steps taken to install essential IT and other infrastructure, the Mechanism will now be able to escalate progress on its substantive work. In particular, in the coming months, it will rapidly move towards the further building of its evidence collection, the sharing of relevant materials under the rigorous frameworks established, and the development of its case files.

76. The Mechanism expresses its gratitude to the many States and other entities that are already supporting its work. It will continue its efforts to actively engage with others in accordance with the principles of independence and impartiality that guide its mandate.

77. Although the Mechanism faces many challenges, it has the most compelling incentive to overcome them. The individuals and communities on all sides who are affected by the crimes committed in the Syrian Arab Republic deserve a comprehensive path towards justice. In helping to lay that path, the Mechanism is committed to an approach that seeks to empower those most affected, recognizing that the accountability process must be fully informed by the perspective of victims.